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SUBJECT: ICC PROSECUTION FILES APPLICATION FOR BASHIR'S ARREST

REF: THE HAGUE 0593

--- ICC PROSECUTION FILES APPLICATION FOR BASHIR'S ARREST ---

¶1. (U) The Prosecutor's Office has filed an application for an arrest warrant against Sudanese President, Omar Hassan Ahmad AL BASHIR. It is now up to the Pre-Trial Chamber (PTC) to decide whether there are reasonable grounds to believe that AL BASHIR committed one or more of the alleged crimes. If the PTC does make this determination and issues the arrest warrant, then the PTC will most likely decide which countries will receive requests for cooperation in connection with his arrest and surrender. If the PTC follows past practice, Sudan, States Parties, Security Council Members and most of the bordering States will receive such requests. (See Reftel). A PTC decision on whether to issue an arrest warrant is not expected until sometime after the end of the Summer Recess (Aug. 10), and in press statements, the Prosecutor has indicated that the PTC's decision could take in excess of two to three months.

--- BASHIR CHARGED WITH GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES ---

¶2. (U) In the Application filed today, the Prosecution has concluded that there are reasonable grounds to believe that AL BASHIR bears criminal responsibility for: 1) the crime of genocide for a) killing members of the Fur, Masalit and Zaghawa ethnic groups ("target groups"), b) causing serious bodily or mental harm to members of those groups, and c) deliberately inflicting on those groups conditions of life calculated to bring about their physical destruction in part (See para 6); 2) crimes against humanity for acts of (a) murder, (b) extermination, (c) forcible transfer of the population, (d) torture, and (e) rapes (See para 7); and 3) for war crimes for intentionally directing attacks against the civilian population as such, and pillaging a town or place (See para 8). The Application covers crimes from March 2003 to the date of its filing.

¶3. (U) The Prosecution does not allege that AL BASHIR physically or directly carried out any of the crimes, but instead committed crimes through members of the state apparatus, the army and the Militia/Janjaweed (indirect perpetration or perpetration by means). In particular, AL BASHIR exercised both de jure and de facto sovereign authority, as President of the Republic, Head of the National Congress Party and Commander in Chief of the Armed Forces, and that he sits at the apex of, and personally directs, the state's hierarchical structure of authority and the integration of the Militia/Janjaweed within such structure.

--- PROSECUTOR DESCRIBES DETAILS OF THE INVESTIGATION ---

¶4. (U) The Prosecution also advises that in carry out its investigation it has collected statements and evidence during 105 missions conducted in 18 countries and has relied primarily on: (1) witness statements taken from eyewitnesses and victims of attacks in Darfur; (2) recorded interviews of Government of Sudan (GOS) officials; (3) statements taken from individuals who possess knowledge of the activities of officials and representatives of the GOS and of the Militia/Janjaweed in the conflict in Darfur; (4) documents and other information provided by the GoS upon request of

the Prosecution; (5) the Report of the UN Commission of Inquiry ("UNCOI") and other materials provided by the UNCOI; (6) the Report of Sudanese National Commission of Inquiry ("NCOI") and other materials provided by the NCOI; and (7) documents and other materials obtained from open sources. The Prosecution also alleges that they are aware of the incarceration of officers who refused to comply with AL BASHIR's orders to commit genocide.

--- BACKGROUND ON THE ALLEGED CHARGES ---

15. (U) The Application alleges, by way of the context to the crimes, that AL BASHIR, set out to quell target group movements through armed force and, over the years, also employed a policy of exploiting real or perceived grievances between the different tribes struggling to prosper in the difficult Darfur environment. According to the Application, he promoted the idea of a polarization between tribes aligned with the Government, whom he labeled "Arabs", and the three groups he perceived as the main threats, whom he labeled "Zurgas" or "Africans", and, in March 2003, after negotiations and armed action both failed to end the rebellion, AL BASHIR decided and set out to destroy in part the target groups, on account of their ethnicity.

16. (U) Thus, in connection with respect to the genocide claim, the Application alleges that AL BASHIR made "carte blanche" orders to his subordinates to quell the rebellion and take no prisoners that triggered a series of brutal attacks against the target groups, where the Armed Forces, often acting together with Militia/Janjaweed, singled out for attack those villages and small towns inhabited mainly by members of the target groups, carrying out such attacks jointly and in a similar pattern throughout the entire period, up to the date of filing. According to the Application: 1) 35,000 people have been killed outright in such attacks; an overwhelming majority of them are from the three target groups; 2) almost the entire population of the target groups has been forcibly displaced following the attacks, 3) the target groups, far from being assisted in the IDP camps, were also attacked in the camps, 4) thousands of women and girls belonging to the target groups were and continue to be raped in all three States of Darfur by members of the Militia/Janjaweed and Armed Forces since 2003, 5) at least 2.7 million civilians - principally members of the target groups - were violently uprooted from lands on which they and their ancestors had been living for centuries, 6) food, wells and water pumping machines, shelter, crops and livestock, as well as any physical structures capable of sustaining life or commerce, were destroyed with the goal being to ensure that those inhabitants not killed outright would not be able to survive without assistance; and 7) meaningful aid was systematically refused and other efforts to bring humanitarian aid to the 2,450,000 civilians displaced were hindered.

17. (U) With respect to the charges of crimes against humanity, the Application alleges that the acts of murder, rape, forcible displacement and extermination were committed against members of the target groups and other, smaller ethnic groups, such as the Tunjur, Erenga, Birgid, Misseriya Jebel, Meidob, Dajo and Birgo. While the attacks against these groups were carried out on discriminatory grounds, there apparently is insufficient evidence at this time to substantiate a charge of genocide in respect of these groups.

18. (U) With respect to the war crimes charges, the Application alleges that at all times relevant to the charges, the GOS has been engaged in a military campaign conducted in Darfur against rebel armed forces including the SLM/A and the JEM. The Application also states that both rebel groups mainly recruit from the target group, and that the GOS has relied on Militia/Janjaweed. Finally, according to the Application, AL BASHIR also committed, through other persons, the war crime of pillaging towns and villages in Darfur, including but not limited to Kodoom, Bindisi, Mukjar, Arawala, Shataya, Kailek, Buram, Muhajeriya, Siraf Jidad, Silea, Sirba, Abu Suruj and villages in the area of Jebel Mun.

--- REQUEST FOR WARRANT, BUT NOTES POSSIBILITY OF SUMMONS ---

19. (U) The Prosecutor has requested issuance of an arrest warrant but also explicitly acknowledged that a summons to appear could also be issued, noting the possibility that circumstances could lead prosecution to modify its assessment.

GALLAGHER